

BEFORE THE SUPERINTENDENT OF PUBLIC INSTRUCTION
NANCY KEENAN

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BOARD OF TRUSTEES OF SCHOOL)
DISTRICT NO. 2, BILLINGS)
PUBLIC SCHOOLS,)
Appellant,)
vs.)
IN THE MATTER OF)
MONICA KITTOCK-SARGENT)
Respondent.)

DECISION AND ORDER
Appeal following Remand
OSPI 263-96
(Amended Caption
Corrected OSPI Number)

* * * * *

PROCEDURAL HISTORY

The Trustees of School District No. 2, Billings Public Schools, [hereinafter the Trustees] are appealing a decision of Acting Yellowstone County School Superintendent Janet Allie. Superintendent Allie held that the Trustees did not give Monica Kittock-Sargent the true reasons for their decision not to renew her contract and ordered the District to offer Kittock-Sargent a contract for the 1993-94 school year.

The Trustees hired Monica Kittock-Sargent to be the principal of Billings West High School beginning in the 1991-1992 school year. At an April 19, 1993, board meeting the Trustees voted not to renew her contract [hereinafter referred to as "nonrenewal"] for the 1993-1994 school year. At the time of the nonrenewal she was a nontenured principal. See §§ 20-1-101(18) and 20-4-203, MCA.

Under Montana statute, a principal is included in the definition of "teacher." 20-1-101(18), MCA.

The Trustees sent her notice of the nonrenewal decision and she requested a written statement of reasons. Section 20-4-206, MCA. On April 29, 1993, the Chairman of the Board of Trustees gave her the following reasons:

1. Your relationship with the staff, parents, and students at West High has been unsatisfactory, and your efforts to enhance such relationships have not been effective.
2. The climate at West High is negative, not positive and your efforts to alter that climate have been unsuccessful.
3. You have not effectively communicated a clear, positive direction concerning school programs and staffing at West High to staff, parents, and students.
4. You have not been able to establish effective communication with staff and parents. Many feel their input is not considered and follow through after consultations on issues does not occur.
5. You failed to effectively prepare staff, students and parents for changes in procedures and programs which you have implemented or wished to implement.
6. Your leadership has not been effective.
7. You have failed to utilize and implement input and directives which Dr. Carparelli and Mr. Fred provided you on repeated occasions in which your performance was discussed.
8. The District does not believe that you can make sufficient positive change with respect to the above deficiencies during the next school year.

Kittcock-Sargent appealed pursuant to § 20-4-206(4), MCA. She disqualified Yellowstone County Superintendent Buzz Christiansen. He appointed Janet B. Allie, Valley County Superintendent of Schools, to hear the matter.

The acting County Superintendent heard 10 days of testimony over a period of three months. On August 31, 1994, she issued her Findings of Fact, Conclusions of Law and Order requiring the District to offer Kittock-Sargent a contract for the 1993-1994 school year. The Trustees appealed the decision to the State Superintendent of Public Instruction on September 27, 1994. The parties filed briefs and presented oral argument. After reviewing the record, the parties' briefs, the County Superintendent's Findings of Fact, Conclusions of Law and Order and having heard oral argument, this State Superintendent of Public Instruction remanded the case back to the Acting County Superintendent with the following instructions:

The Acting County Superintendent of Schools' decision is remanded with the following instructions:

1. The phrase "hold a hearing . . . to determine whether the reasons are true" (§ 20-4-206 (4)) means: Hold a hearing and determine whether the written reasons stated by the Trustees were their reasons for deciding not to renew the employment contract of Kittock-Sargent and whether, given the findings of facts, a reasonable person could find the Trustees' nonrenewal decision within the limits of discretion.
2. Applying the legal standard stated in one, provide a concise and explicit statement of the underlying facts -- supported by cites to the record -- which lead her to the ultimate finding that the District Trustees did or did not give Kittock-Sargent a statement of the true reasons why her contract was nonrenewed.
3. No further hearings or briefs are necessary.

On remand, the Acting County Superintendent reaffirmed her decision that the reasons provided to Kittock-Sargent were not the Trustee's true reasons for their decision not to renew her contract. The County Superintendent ordered the District to offer

Kittock-Sargent a contract for 1993-1994. The District appealed the County Superintendent's Order on Remand to the State Superintendent. The State Superintendent of Public Instruction granted the Montana School Boards Association permission to file an amicus brief. Having reviewed the Acting County Superintendent's Findings of Facts, Conclusions of Law and Order, the briefs of the parties and amicus, the State Superintendent of Public Instruction now enters the following:

ORDER

The Appellant District failed to show that it was prejudiced by a clearly erroneous decision of the County Superintendent. The Findings of Fact, Conclusions of Law and Order are hereby affirmed.

STANDARD OF REVIEW

This Superintendent's review of a county superintendent's decision is based on the standard of review of administrative decisions established by the Montana Legislature in § 2-4-704, and adopted by this Superintendent in ARM 10.6.125.

Section 20-4-206 establishes a burden of proof in the nontenured teacher. Kittock-Sargent had to establish to the County Superintendent by clear and convincing evidence that the Trustees did not give her their true reasons for nonrenewal. On appeal the Trustees must establish that the District was prejudiced by a clearly erroneous ruling. Terry v. Board of Resents, 714 P.2d 151, at 153, 220 Mont. 214, at 217 (1986).

DISCUSSION

The 55th Legislative Session passed House Bill (HB) 49, which repeals 20-4-206 (4), (5) and (6), MCA, (Chapter 438, 1997 Session Laws). This change of law is effective July 1, 1997, and will apply in the future to the issues of law raised in this appeal. As of July 1, 1997, 20-4-206, MCA, § 20-4-206 states:

(1) The trustees shall provide written notice by June 1 to each nontenure teacher employed by the district regarding whether the nontenure teacher has been reelected for the ensuing school fiscal year. A teacher who does not receive written notice of reelection or termination is automatically reelected for the ensuing school fiscal year.

(2) A nontenure teacher who receives notification of reelection for the ensuing school fiscal year shall provide the trustees with written acceptance of the conditions of reelection within 20 days after the receipt of the notice of reelection. Failure to notify the trustees within 20 days constitutes conclusive evidence of the nontenure teacher's nonacceptance of the tendered position.

(3) Subject to the June 1 notice requirements in this section, the trustees may nonrenew the employment of a nontenure teacher at the conclusion of the school fiscal year with or without cause.

HB 49 included a savings clause which states:

This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before the effective date of this act.

The controversy in this case began prior to the change in law and is decided based on the wording of § 20-4-206, MCA, (1995).

This State Superintendent finds that the County Superintendent's Conclusions of Law Nos. 13, 15, and 16 are central to her decision in this matter. They state:

13. The District's witnesses were not credible. They were confused, contradictory, forgetful, inconsistent and evasive.

15. The District's evidence was uncertain, ambiguous and contradictory under the "clear and convincing standard defined herein. In contrast, the evidence brought forth by Kittock-Sargent, was clear, direct, and weighty. Her evidence was orderly and her witnesses had distinct memory of events.

16. This Hearing Officer is charged with hearing the witnesses and evaluating their testimony and assessing credibility. *Frazer School District No. 2. v. Flynn*, 225 Mont. 299, 732 P. 2d 409 (1987).

Findings of Fact, Conclusions of Law and Order, February 6, 1996, page 34.

Conclusions of Law 13 and 15 are more accurately labeled Findings of Fact. The County Superintendent was the trier of fact. She found that the District's witnesses were not credible and found the witnesses of Kittock-Sargent credible. Given these two findings, it is easy to understand how she reached her conclusion that the reasons given by the Trustees for Kittock-Sargent's nonrenewal were not their true reasons.

The Trustees address the County Superintendent's Conclusions of Law on pages 57 through 60 of their Initial Brief on appeal. Specifically, it states in part:

"While she included in conclusion of law no. 13 a statement fed to her by Ms. Kittock-Sargent that all the District's witnesses were not credible, the breadth of such a conclusion reflects that in reaching her decision concerning the standard of proof required of Ms. Kittock-Sargent, she failed to grasp the distinction between preponderance of the evidence and clear and convincing evidence. If anything, the evidence presented to the Acting County Superintendent was not certain, it did contain ambiguities, and involved contradictions." Id., Page 58.

The hearing in this matter lasted for 10 days and resulted in a 2310 page transcript. The County Superintendent had ample opportunity to form her conclusions about witness credibility and the weight of the evidence. The County Superintendent's Order included cites to the exhibits and the transcript of evidence she relied upon to support each finding of fact. There is substantial evidence to support each finding. The ultimate issue in this case is: Whether Kittock-Sargent proved by clear and convincing evidence that the reasons given by the Trustees were not their true reasons for her nonrenewal. Although the Trustees presented witness testimony to support their written reasons, the County Superintendent did not believe the Trustees' witnesses. Thus, she was left with the "clear and direct evidence" presented by Kittock-Sargent. The County Superintendent correctly applied the law. The decision of the County Superintendent is hereby affirmed. The Trustees' appeal is denied.

DATED this 2 day of July 1997.

Nancy Keenan
NANCY KEENAN
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CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 3rd day of July 1997, a true and exact copy of the foregoing DECISION AND ORDER was faxed and mailed, postage prepaid, to the following:

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